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## REMARKS

**STATUS OF THE CLAIMS**

Claims 2-4, 10-12, and 25 are currently pending. Claims 2, 3, and 4 have been amended. Claims 26-42 have been added. Claim 25 has been canceled. Following entry of this Amendment, claims 2-4, 10-12, and 26-42 will be pending. Applicants reserve their right to later pursue the subject matter of the cancelled claims and the claims prior to their amendment in this response in continuing applications.

**I. REJECTION UNDER 35 U.S.C. § 102(e)**

The Examiner has rejected claims 2-4, 10-12, and 25 under 35 U.S.C. § 102(e) as allegedly being anticipated by Lerman et al (US Patent No. 6,441,156).

Applicants respectfully maintain that claims are not anticipated by Lerman et al.

**Claim 2**

In particular, the Examiner has alleged that claim 2 is anticipated by SEQ ID NO:2 of Lerman et al. and references Sequence Comparison A of the Office Action. Sequence Comparison A is an alignment of SEQ ID NO:20 of the present application and SEQ ID NO:2 of Lerman et al. Claim 2, as amended, recites the closed claim phrase "consisting of" with regard to the claimed nucleic acid encoding a secreted soluble calcium channel subunit polypeptide and recites in part that the polynucleotide sequence encodes "- from amino-acid 1 to between amino-acids 1027 and 1062 of SEQ ID NO:20." SEQ ID NO:2 of Lerman et al., however, is a polypeptide of 1145 amino acids (see col. 65-72). Thus the nucleic acids of claim 2 encode amino acid sequences that are shorter than the nucleic acid than the 1145 amino acid sequence of SEQ ID NO:2 of Lerman et al. Accordingly, Lerman et al. fail to disclose all of the limitations of the claim 2. Accordingly, Applicants respectfully request that the rejection under 35 U.S.C. § 102(e) be withdrawn with regard to claim 2.

**Claim 3**

Similarly, the Examiner rejected claim 3 as being allegedly anticipated by SEQ ID NO:2 of Lerman et al. and again referenced Sequence Comparison A of the Office Action. Sequence Comparison A is an alignment of SEQ ID NO:20 of the present application and SEQ ID NO:2 of Lerman et al. Claim 3, as amended, recites in part that

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the claimed nucleic acids encode “-a polypeptide consisting of from amino-acid 1 to between amino-acids 1047 and 1062 of SEQ ID NO:20.” Thus, claim 3, as amended, uses the closed claim phrase “consisting of” with regard to the polypeptide sequences that are encoded by the claimed nucleic acids. SEQ ID NO:2 of Lerman et al., however, is a nucleic acid that encodes 1145 amino acids (see col. 65-72). Thus the nucleic acids of claim 3 encode amino acid sequences that are shorter than the 1145 amino acid sequence of SEQ ID NO:2 of Lerman et al. Accordingly, Lerman et al. fail to disclose all of the limitations of the claim 2. Therefore, Applicants respectfully request that the rejection under 35 U.S.C. § 102(e) be withdrawn with regard to claim 3.

#### Claim 4

The Examiner also alleged that claim 4 is anticipated by SEQ ID NO:1 of Lerman et al. and references Sequence Comparisons B and C of the Office Action. Sequence Comparison B is an alignment of SEQ ID NO:1 of the present application and SEQ ID NO:1 of Lerman et al. Sequence Comparison C is an alignment of SEQ ID NO:3 of the present application and SEQ ID NO:1 of Lerman et al. Claim 4, as amended, recites the closed claim phrase “consists of” with regard to the claimed nucleotide sequences encoding a secreted soluble calcium channel subunit polypeptide and sets out a Markush group of SEQ ID NOS. that includes SEQ ID NO:1 and SEQ ID NO:3. SEQ ID NO:1 and SEQ ID NO:3, however, encode polypeptides of 1062 and 1109 amino acids in length, respectively. SEQ ID NO:1 of Lerman et al. et al., however, is a nucleic acid that encodes a polypeptide of 1145 amino acids in length (see e.g., col. 57-66 of Lerman et al.). Thus, SEQ ID NO:1 of Lerman et al. encodes a polypeptide that is longer than the polypeptide encoded by SEQ ID NO:1 or SEQ ID NO:3 of the present application. Accordingly, Lerman et al. fail to disclose all of the limitations of the claim 4. Therefore, Applicants respectfully request that the rejection under 35 U.S.C. § 102(e) be withdrawn with regard to claim 4.

#### Claims 10-12

Claims 10-12 incorporate all of the limitations of claim 2. Claim 2 is novel over Lerman et al. Accordingly, claims 10-12 are patentable over Lerman et al. Therefore,

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Applicants respectfully request that the rejection under 35 U.S.C. § 102(e) be withdrawn with regard to claims 10-12.

**Claim 25**

The Examiner rejected claim 25 as allegedly being anticipated by Lerman et al. under 35 U.S.C. § 102(e).

Applicants have canceled claim 25. Therefore, Applicants respectfully request that the rejection under 35 U.S.C. § 102(e) be withdrawn with regard to claim 25.

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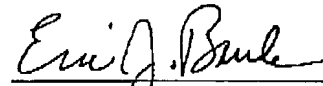
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### CONCLUSION

In view of the foregoing, Applicants believes all claims now pending in this Application are in condition for allowance. If the Examiner believes that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at 734-622-2095.

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Respectfully submitted,



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